

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

CYTOLOGIX CORPORATION,

Plaintiff,

v.

VENTANA MEDICAL SYSTEMS, INC.,

Defendant.

Civil Action No. 04-11783 (RWZ)

**DEFENDANT VENTANA MEDICAL SYSTEMS, INC.'S CONDITIONAL MOTION  
TO SUPPLEMENT ITS ANSWER TO THE FIRST AMENDED COMPLAINT**

Defendant Ventana Medical Systems, Inc.'s Motion to Dismiss for Lack of Jurisdiction (Docket No. 73) is currently pending before this Court. As explained in that motion, CytoLogix lacks standing to sue because it relinquished all substantial rights under the patents-in-suit. If there is no jurisdiction, then the relief sought herein is moot. Therefore, the present motion is brought conditionally, and need not be decided if Ventana's jurisdictional motion is granted.

Pursuant to Federal Rule of Civil Procedure 15(d), Ventana hereby conditionally moves the Court for leave to supplement its answer to the First Amended Complaint. As grounds for this motion, Ventana states that persons substantively involved in the prosecution of the patents-in-suit and closely related applications have committed inequitable conduct before the U.S. Patent and Trademark Office, including by acts and omissions subsequent to the time this action was commenced, rendering the patents unenforceable. Ventana seeks leave to assert an affirmative defense and counterclaim of patent unenforceability in a supplemental pleading.

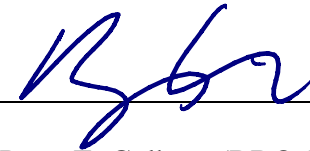
In further support of its motion, Ventana respectfully refers the Court to the Memorandum of Defendant Ventana Medical Systems, Inc. in Support of Its Conditional Motion to Supplement Its Answer to the First Amended Complaint, and the Declaration of Roger J. Chin in Support of Ventana's Conditional Motion to Supplement Its Answer to the First Amended Complaint, filed concurrently herewith.

A copy of Ventana's proposed Supplemental Answer to First Amended Complaint and Counterclaim is concurrently being lodged under seal, pursuant to this Court's Order of December 1, 2005.

Dated: April 25, 2007

VENTANA MEDICAL SYSTEMS, INC.

By its attorneys,



Peter E. Gelhaar (BBO #188310)  
Michael S. D'Orsi (BBO #566960)  
DONNELLY, CONROY & GELHAAR, LLP  
One Beacon Street, 33rd Floor  
Boston, Massachusetts 02108  
(617) 720-2880

Ron E. Shulman (*pro hac vice*)  
Roger J. Chin (*pro hac vice*)  
Sarah R. Zimmerman (*pro hac vice*)  
WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation  
650 Page Mill Road  
Palo Alto, California 94304  
(650) 493-9300

Jeffrey N. Danis (BBO #113880)  
VENTANA MEDICAL SYSTEMS, INC.  
1910 Innovation Park Drive  
Tucson, Arizona 85737  
(520) 229-3965

**LOCAL RULE 7.1(A)(2) CERTIFICATION**

Counsel hereby certifies, in accordance with Local Rule 7.1(A)(2), that prior to filing this paper the parties have conferred and attempted in good faith to resolve or narrow the issues presented herein.

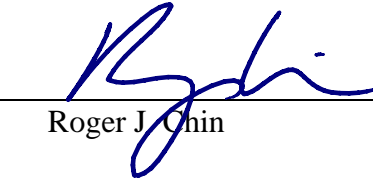


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Roger J. Chin

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on April 25, 2007.



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Roger J. Chin